THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte SCOTT S. DUESTERHOEFT,
JAMES W. ROBERTSON, AND
FRANCIS J. SHAY

_____

Appeal No. 1997-3403
Application 08/032,889

_____

ON BRIEF

_____

Before THOMAS, FLEMING and LALL, Administrative Patent Judges.

LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection[1] of claims 1 to 15.

[1]An amendment after the final rejection was filed [paper no. 9], however, its entry in the record was not approved [paper no. 10].

The disclosed invention is directed to a grommet which is formed of an elastomeric material and is securable to an edge of a panel or wall of an enclosure, at an opening or recess through the enclosure wall defining an exit for a cable to seal the recess around the cable when the cable has been inserted therethrough, or to seal the recess if no such cable is inserted at that particular recess. The grommet can have a plurality of cable-receiving sections for sealing an array of recesses. Each cable-receiving section of grommet includes a vertical virtual slit from and through a thick top edge to a thick bottom edge, with the slit being openable as a cable is moved laterally into the section from the top edge and toward the bottom edge, and which is somewhat stiffly elastic to grip the cable and close off the recess around the cable. The grommet is secured to the enclosure wall edge by receiving into close fitting apertures respective upstanding wall sections between the cable-receiving sections, latching projections of the wall sections latch with latching recesses of the grommet. The grommet may later be removed from the edge if desired.

Claim 1 is reproduced below as representative of the invention.

1. A grommet for sealing at least one entrance to an enclosure through each of which is received a length of cable, each of the entrances being a recess along an edge of a panel of the enclosure, comprising:

an integral member molded of elastomeric material and having thick top and bottom edge portions and including cable-receiving sections associated with each of said recesses along said edge of a said panel of said enclosure, each said cable-receiving section coextending from said top edge portion to said bottom edge portion and including a virtual slit extending through and downwardly from said top edge portion and concluding at said bottom edge portion; and

thick portions beside each said cable-receiving section between said top and bottom edge portions,

each said cable-receiving section comprising a pair of opposed stiff deflectable portions along said top edge portion adjacent said virtual slit therebetween, and a diaphragm section downwardly from and adjacent said opposed stiff deflectable portions and joined only initially to said stiff deflectable portions by a frangible section therebetween, said diaphragm section defined by at least a first pair of opposed resilient strips extending from respective thickened portions to free ends adjacent said virtual slit therebetween, all so that a cable portion is insertable into a respective said cable-receiving section from said top edge portion by being urged along said virtual slit deflecting apart and moving past said stiff deflectable portions and at least deflecting apart adjacent ends of a first said pair of said opposed resilient strips, with at least said stiff deflectable portions closing together after said

cable portion is moved therepast, thereby closing off any opening between said cable portion and said top edge portion while a said pair of opposed resilient strips is biased against said cable portion to minimize any opening adjacent said cable portion.

The Examiner relies on the following references:

Smith	4,624,514	Nov. 25, 1986
Rodrigues et al. (Rodrigues)	5,101,079	Mar. 31, 1992

Claims 1 to 15 stand rejected under 35 U.S.C. § 103 as being obvious over Smith and Rodrigues.

Rather than repeat the arguments of Appellants and the Examiner, we make reference to the briefs[2] and the answer for the respective details thereof.

OPINION

We have considered the rejections advanced by the Examiner and the supporting arguments. We have, likewise, reviewed the Appellants' arguments set forth in the briefs.

We affirm-in-part.

In our analysis, we are guided by the general proposition that in an appeal involving a rejection under 35 U.S.C. § 103,

[2]A first reply brief was filed as paper no. 14 and a second reply brief was filed as paper no. 16. Both were denied entry, see paper nos. 15 and 17. However, the second was entered after a petition to the Commissioner, see paper no. 20.

an examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to the appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). We are further guided by the precedence of our reviewing court that the limitations from the disclosure are not to be imported into the claims. In re Lundberg, 244 F.2d 543, 113 USPQ 530 (CCPA 1957); In re Queener, 796 F.2d 461, 230 USPQ 438 (Fed. Cir. 1986). We also note that the arguments not made separately for any individual claim or claims are considered waived. See 37 CFR § 1.192 (a) and (c). In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the

prior art."); In re Wiechert, 370 F.2d 927, 936, 152 USPQ 247, 254 (CCPA 1967) ("This court has uniformly followed the sound rule that an issue raised below which is not argued in this court, even if it has been properly brought here by reason of appeal is regarded as abandoned and

will not be considered. It is our function as a court to decide disputed issues, not to create them.").

Analysis

At the outset, we note that Appellants [brief, page 3] have elected to group the claims as follows. Claims 1, 5, 9, 14 and 15 form the first group; claims 2, 6 and 10 form the second group and 3, 4, 7, 8, 11 and 12 form the third group.

The rejection

All the claims, 1 to 15, are rejected under 35 U.S.C. § 103 over Smith and Rodrigues. We consider the various groupings below.

Claims 1, 5, 9, 14 and 15

We take up claim 1 as a representative of this group. The Examiner identifies the differences between Smith and the claimed invention and then employs Rodrigues to meet these differences. Thus, the Examiner asserts [answer, page 4] that "it would have been obvious ... to modify the grommet of Smith by adopting the teachings of Rodrigues et al. ('079) to minimize the water passage through the basic claimed grommet and to facilitate the installation of the basic claimed grommet to an enclosure with a plurality of the openings."

Appellants argue [brief, page 5] that "[n]or does the disclosure of the references act as set forth in the claims as a result of the structure claimed, that a cable is pushed past stiff deflectable portions ... , while at least one pair of resilient strips of the diaphragm section remains biased against the cable portion beneath and spaced from the now-closed stiff deflectable portions along the top of the cable recess." Appellants further argue [brief, page 6] that "[n]either [each single] reference nor the combination thereof meet the limitation in the independent claims of a diaphragm being joined ... by a frangible portion ... and the resilient strips." Appellants again advocate [second reply brief, page 2] that "a synergistic effect is established in that those resilient strips not engaged by a cable would close ... " The Examiner responds [answer, page 5] that "Rodrigues et al. disclose the membrane 48 which has thick portions and these thick portions would inherently act as stiff deflectable portions as claimed. Further, the middle section of the membrane 48 can be considered as diaphragm section and the membrane 48 would inherently act as the claimed grommet."

We have reviewed the above positions of Appellants and

the Examiner and find ourselves persuaded by the Examiner's reasoning. We find that barrier member 40 of Rodrigues serves as a grommet and acts as a barrier to moisture getting into the enclosure 10, see Summary of the Invention. Figures 4 and 5 of Rodrigues show the structure recited in claim 1, as the Examiner has pointed out above. Members 46 and 48 constitute the deflectable portions, a part of 48 is the frangible section joining the diaphragm section and the deflectable portions. Thus, when a cable 30 is inserted along the line "l" through the barrier member 40 into the enclosure 10, the frangible membrane 48 is pierced, though only at the point of entry, and the deflectable members 46 as well as the membrane 48 close against the cable so that moisture is sealed out from getting into the enclosure, as happens in the claimed grommet. Therefore, we sustain the obviousness rejection of claim 1, and its grouped claims 5, 9, 14 and 15 over Smith and Rodrigues.

Claims 2, 6 and 10

We consider claim 2 as representative of this group. The Examiner again combines Smith and Rodrigues. We note that Smith shows a resilient member 88 with a slit 90. The

resilient member 88 may be considered to have a pair of opposed resilient strips. Finger-like members 46 of Rodrigues would have been provided to strips 88 of Smith to provide opposed resilient strips. We agree with the Examiner that even though Rodrigues does not show a second pair of opposed resilient strips, it would have been obvious for an artisan to add additional resilient strips since Rodrigues contemplates this at col. 3, lines 33 to 34. Thus, we sustain the obviousness rejection of claim 2 and its grouped claims 6 and 10.

Claims 3, 4, 7, 8, 11 and 12

With respect to this group of claims, Appellants argue that the references do not suggest a latching recess. However, we note that none of the claims 3, 7 and 11 contains the latching feature. Thus, Appellants' arguments are not applicable to claims 3, 7 and 11.

Moreover, with respect to the representative claim 3, Rodrigues does show a slot, defined by member 34 which fits a corresponding wall section of enclosure 10. Thus, we sustain the obviousness rejection of claim 3 and its grouped claims 7 and 11.

With respect to claims 4, 8 and 12, representative claim 4, like claims 8 and 12, contains the recitation of the type "latching engagement with a corresponding latching projection along said corresponding wall section of said panel." The Examiner alleges that such a latching mechanism is "well known" in the art [answer, page 5]. We do not agree because claim 4 calls for certain inter-fitting elements which coact to make the latching mechanism operate. Such elements are not shown by the applied prior art. Therefore, we do not sustain the obviousness rejection of claim 4 and of its grouped claims 8 and 12 over Smith and Rodrigues.

In summary, we have sustained the decision of the Examiner under 35 U.S.C. § 103 rejecting claims 1 to 3, 5 to 7, 9 to 11 and 13 to 15, but have not sustained the decision with respect to claims 4, 8 and 12. Accordingly, we affirm-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a).

AFFIRMED-IN-PART

JAMES D. THOMAS Administrative Patent Judge	)	
MICHAEL R. FLEMING Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
PARSHOTAM S. LALL Administrative Patent Judge	)	

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